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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
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13 ALERE MEDICAL, INC., a California
Corporation,

14 Plaintiff,

15 v.

16 HEALTH HERO NETWORK, INC., a California
17 Corporation,

18 Defendant.
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CASE NO.: C 07-05054 (MEJ)

**NOTICE OF PENDENCY OF
OTHER ACTION OR
PROCEEDING PURSUANT TO
CIVIL L.R. 3-13 (a) AND (b) AND
STATEMENT OPPOSING NOTICE
FILED BY ALERE MEDICAL, INC.
PURSUANT TO CIVIL L.R. 3-13 (c)**

1 TO THE COURT AND ALL PARTIES OF RECORD:

2 Pursuant to Local Rule 3-13 (a) and (b), defendant Health Hero Network, Inc.
3 (“Health Hero”) provides notice that a material part of the subject matter of the above-
4 captioned action and the identical parties are involved in an action before the United
5 States District Court for the Northern District of Illinois, Eastern Division, Civil Action
6 No. 07-C-5031 (the “Illinois action”). Pursuant to Local Rule 3-13 (c), Health Hero also
7 hereby opposes the characterization of the Illinois action provided by plaintiff Alere
8 Medical, Inc. (“Alere”) in its Notice of Pendency of Other Action or Proceeding filed on
9 October 1, 2007 (“Alere Notice”).

10 Specifically, Health Hero provides notice that the Illinois action, filed on
11 September 6, 2007, involves a material part of the same subject matter as the above-
12 captioned matter, including claims relating to the infringement of related United States
13 patents by Alere’s products including the Alere DayLink® Monitor, the Alere Heart
14 Failure Program, the Alere NurseStation, the Alere Home Monitoring Program, and the
15 AlereNet system. In addition, the parties to the Illinois action and the above-captioned
16 action are identical. Both cases involve only two parties – Health Hero Network, Inc. and
17 Alere Medical, Inc.

18 Health Hero opposes Alere’s statements that “[t]his action involves seven separate
19 and unrelated patents...” and that “these actions do not involve common questions of
20 fact,” because, as set forth above, the patents at issue are related and the products at issue
21 are the same. Alere Notice at 1-2. Health Hero also disagrees that “it is unlikely that
22 there will be an unduly burdensome duplication of labor and expense or conflicting
23 results if the cases are conducted before different judges” and, contrary to Alere’s Notice,
24 strongly believes that coordination would avoid conflicts, conserve resources and
25 promote an efficient determination of the action. *See id.*

26 Accordingly, Health Hero hereby provides notice that coordination of the Illinois
27 action and the above-captioned action is required to avoid conflicts, conserve resources
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1 and promote an efficient determination of the dispute between the parties. Indeed, the
2 above-captioned action should be transferred to the Northern District of Illinois where the
3 first-filed action is pending and where both parties conduct business operations.

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5 Dated: October 9, 2007

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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8 By: /s/ Stefani E. Shanberg
Stefani E. Shanberg

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10 Attorneys for Defendant
HEALTH HERO NETWORK, INC.